IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA
Dublin Division

IN RE:	)	Chapter 11 Case
	)	Number 388-00002
JAMES W. McARTHUR	)	
	)	
Debtor	)	
	)	
FEDERAL LAND BANK OF COLUMBIA	)	
and SOUTH ATLANTIC PRODUCTION	)	FILED
CREDIT ASSOCIATION	)	at 12 O'clock & 15 min P.M.
	)	Date 9-13-88
Movants	)	
	)	
vs.	)	
	)	
JAMES W. McARTHUR	)	
	)	
Respondent	)	

ORDER

The motions of Federal Land Bank of Columbia (FLB) and South Atlantic Production Credit Association (PCA) for relief from stay in this Chapter 11 proceeding having been heard pursuant to notice and after consideration of the evidence submitted and relevant law provided in briefs by counsel for the parties, this court makes the following findings of fact and conclusions of law.

Under a promissory note dated March 28, 1980, James W. McArthur, the debtor-in-possession in this Chapter 11 proceeding, (debtor) borrowed from FLB One Million Three Hundred Twenty Five Thousand and No/100 ($1,325,000.00) Dollars. Under a reamortization agreement dated April 14, 1981 the debtor received an additional advance and the repayment terms of the loan was extended. As of the date of the filing of this Chapter 11 petition, the principal and accrued interest balance due FLB was One Million Five Hundred Nineteen Thousand Two Hundred Thirty Nine and 94/100 ($1,519,239.94) Dollars. The indebtedness to FLB was originally secured by a first priority deed to secure debt on 14 tracts of farm and timberland in

Montgomery and Toombs Counties, Georgia. While there have been partial releases of timber and real estate sales during the term of this loan, the debtor retains 13 tracts of land totaling approximately 3,149.55 acres, which secures the FLB loan.

The debtor is also indebted to the PCA under a renewal note dated January 17, 1985 with a balance due as of the date of the filing of this Chapter 11 petition of Three Hundred Seventeen Thousand One Hundred Three and 14/100 ($317,103.14) Dollars. The PCA has a perfected first priority security interest in debtor's farm equipment and a second priority deed to secure debt on the aforementioned 3,149.55 acres.

For the purposes of this hearing, the parties have stipulated that the fair market value of the 3,149.55 acres of farm and timberland is One Million Four Hundred Sixty Four Thousand and No/100 ($1,464,000.00) Dollars and that the fair market value for the farm equipment is Fifty Thousand and No/100 ($50,000.00) Dollars. From the stipulation of collateral

valuations and outstanding balances due FLB and PCA there is no equity in either the land or farm equipment.

As is apparent from the foregoing, the debtor is a farmer. For the calendar year 1988 the debtor's farming operation will include the raising of several crops, including soybeans, corn, peanuts, tobacco, onions, and pecans. The farmer is also engaged in cattle production and "custom work" such as pine tree planting and hay cutting operations. In addition to the income derived from the sale of these farm products and custom work, the debtor will receive payments from the ASCS crop support program and CRP "pine tree" program. While there exist substantial differences between the figures of FLB/PCA and debtor, both project a positive cash flow from debtor's farming operation in 1988. This positive cash flow does not include the servicing of any PCA or FLB debt. The debtor projects a positive cash flow of Two Hundred Eighty Thousand Four Hundred Forty and No/100 ($280,440.00) Dollars.

FLB/PCA project a positive cash flow of One Hundred Twenty Five

Thousand and No/100 ($125,000.00) Dollars. Under the FLB note the contract rate of interest is 11.75%. As calculated for the secured value of the farm and timberland (One Million Four Hundred Sixty Four Thousand and No/100 ($1,464,Q00.00) Dollars), the annual contract interest payable to FLB at 11.75% is One Hundred Seventy Two Thousand Twenty and No/100 ($172,020.00) Dollars. The contract rate of interest due PCA is 12.25%. As

calculated for the secured value of the farm equipment (Fifty Thousand and No/100 ($50,000.00) Dollars), the annual contract interest payable to PCA is Six Thousand One Hundred Twenty Five and No/100 ($6,125.00) Dollars. Real estate ad valorem taxes accrue annually against the acreage, and the 1987 amount due is approximately Eleven Thousand and No/100 ($11,000.00) Dollars.

FLB and PCA have moved for relief from the automatic stay with respect to the 13 tracts of real property and farm machinery. The basis for the motion is movant's contention that the debtor has no equity in the property, that the property is not necessary for an effective reorganization under 11 U.S.C. §362(d)(2), and therefore the movants are entitled to relief from stay. There is no equity in the property for the debtor. It is conceded by FLB and PCA for the purposes of this hearing, that if any reorganization is conceivable the land and equipment would be necessary. However, the movants' main contention is that under no circumstance can the debtor propose a plan by which interest and principal reduction may be made on movant's respective indebtedness; therefore, as no plan can be effectuated the property could not be necessary for an effective reorganization which could not occur.

The Supreme Court of the United States has had occasion to address the issue of the standard to be applied for relief from stay where the movant questions the prospects of any effective reorganization of the debtor. See, United

States Saving Associations of Texas vs. Timbers of Inwood Forest Associates, Ltd., ____U.S._____, 108 S. Ct. 626 (1988). In Timbers Justice Scalia, writing for a unanimous Court, stated:

> Once the movant under 362(d)(2) establishes that he is an undersecured creditor, it is the burden of the debtor to establish that the collateral at issue is "necessary to an effective reorganization". See §362(g). What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means . . . that there must be "a reasonable possibility of a successful reorganization within a reasonable time period." [citation omitted] And while the bankruptcy court demands less detail showing during the four months in which the debtor is given the exclusive right to put together a plan . . ., even within that period lack of any realistic prospect of effective reorganization will require §362(d) relief. (emphasis by Justice Scalia)

Movants argue that a showing of a reasonable prospect of reorganization is impossible in this case since the cash flow generated by debtor's farming operation will be insufficient to service interest on FLB and PCA's debts and pay annual ad valorem taxes accumulating against the property securing these obligations. Movants argue that debtor will necessarily be required to propose a plan which will pay in its entirety the current principal indebtedness at the contracted rate of interest. This contention is incorrect.

There are several tools available both within the Bankruptcy Code and in other applicable federal law which

realistically could lead to a lower principal amount due at a lower interest rate to FLB and PCA, with a resulting payment manageable under the debtor's current projected positive cash flow from the farming operation. The debtor has demonstrated that there exists a reasonable likelihood that the debtor will propose a plan of reorganization.

The debtor has cited the availability of the Agricultural Credit Act of 1987 (Public Law No. 100-233, January 6, 1988) to reduce a portion of the

principal indebtedness and the rate of interest payable to the movants. The Congress of the United States, cognizant of the plight of the American farmer during the past several years, provides in this act a method of debt relief for borrowers under the farm credit system. As a general proposition this relief is in the form of a statutory right of farm credit system borrowers to restructure distressed loans. See, generally, 12 U.S.C. §2202a.

Pursuant to this act, a farmer may apply to a farm credit system lender, which includes movants FLB and PCA, for restructuring of a distressed loan. The act defines a "distressed loan" as a loan which the borrower has insufficient financial resources to pay according to its terms and the loan is delinquent or passed due, the borrower is demonstrating adverse financial and repayment trends, or the lender faces a high probability of loss on account of the delinquency or financial condition of the debtor coupled with inadequate capitalization.

12 U.S.C §2202a(3) The act further defines "restructure and restructuring" as follows:

> The terms "restructure and restructuring" include rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms, of or forbear on, a loan in any way that will make it probable ; that the operations of the borrower will become financially viable. 12 U.S.C. §2202a(a)(7).

The potential breadth of this provision is clear. It is conceivable that a farmer such as this debtor with a distressed farm credit system loan, such as in this case, could use a restructuring to reduce both interest and principal payments.

Procedurally, the act imposes upon farm credit system lenders the duty to consider applications for restructuring of distressed loans. The standards established by the act for approval or denial of restructuring are expressed in general terms, with details to be specified in subsequent regulations. The act generally provides on restructuring debt:

> (1) In general _____ If a qualified lender determines that the potential cost to a qualified lender of restructuring

> the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan. [emphasis added] 12 U.S.C. §2202a(e)(1).

This requires that the lender evaluate the cost of foreclosure and compare those costs with those of the proposed plan of restructuring and must restructure the loan in accordance with

the plan if the plan of restructuring cost less than or is equal in cost to the potential cost of foreclosure to the qualified lender. The proposed act defines costs of foreclosure to include:

> (A) The difference between the outstanding balance due on a loan made by a qualified lender and the liquidation value, taking into , consideration the borrower's repayment capacity and liquidation value of the collateral use to secure the loan;
> (B) The estimated cost of maintaining a loan as a nonperforming asset;
> (C) The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as a result of the foreclosure, including attorneys' fees and court costs;
> (D) The estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and
> (E) All other costs incurred as a result of the foreclosure or liquidation of the loan. 12 U.S.C. §2202a(a)(2).

By comparison, the cost of restructuring is to be determined in the following manner:

> (2) COMPUTATION OF COST OF RESTRUCTURING
> In determining whether the potential cost to the qualified lender of restructuring a distressed loan is less than or equal to the potential cost of foreclosure, a qualified lender shall consider all relevant factors, including
> (A) The present value of interest income and principal forgone by the lender in carrying out the restructuring plan;
> (B) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;
> (C) Whether the borrower has presented a preliminary restructuring plan and cash flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed

> restructuring; and
> (D) Whether the borrower can furnish or is willing to furnish complete and current financial statements in a form acceptable to the institution. 12 U.S.C. §2202(e)(2).

Where the qualified lender determines the cost of restructuring to be equal to or less than the cost of foreclosure, the restructuring plan will be approved. 12 U.S.C. §2202(e)(1).

In addition to the foregoing computation of costs of restructuring, a qualified lender must take into consideration the following factors in rendering a decision on the debtor's application:

> (A) Whether the costs to the lender of restructuring the loan is equal to or less than the cost of foreclosure;
> (B) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;
> (C) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;
> (D) Whether the borrower is capable of working out existing financial difficulties, reestablishing a viable operation, and repaying the loan on a reschedule basis; and
> (E) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that is necessary to place in nonaccrual status. 12 U.S.C. §2202a(d)(1).

From the foregoing analysis of the Agricultural Credit Act of 1987 it cannot be said with a mathematical certainty that this debtor could prevail in a restructuring application with the FLB and PCA. Nor can it be said with a mathematical certainty that any approved restructuring plan would necessarily require a reduction in interest and/or principal due these qualified lenders. However, at this stage of this Chapter 11 proceeding all that is required of the debtor is a showing that he may reasonable propose a plan of reorganization within a reasonable time. See, Timbers, supra.

From the totality of the circumstances surrounding this Chapter 11 proceeding, at this time, the debtor has established a reasonable prospect of reorganization through the use of the Agricultural Credit Act of 1987 to reduce interest payments as well as principal indebtedness. There is no dispute that the loans in question are in distress, there is no dispute that FLB and PCA are qualified lenders under the act, and there is no dispute that this debtor does qualify and could apply for restructuring under the act. A determination of whether any restructuring plan will be approved by the qualified lenders is not necessary at this stage of this Chapter 11 proceeding. It is sufficient to note the availability of this debt relief device and to evaluate the possible, not probable, affect of its utilization on the prospect for a successful reorganization. The availability of relief under the act's provision increases the likelihood that the debtor will be able to escape the full impact

of the terms of the notes entered into with PCA and FLB.

In addition to the debt relief device discussed under the Agricultural Credit Act of 1987, the Bankruptcy Code proposes various means in which relief can be afforded to this debtor. Chapter 11 allows this debtor to adjust the interest rate charged on its debt. Section 1129(b) provides that a proposed Chapter 11 plan may be confirmed over the objection of a creditor so long as the treatment of the creditor is fair and equitable. ,With respect to cramdowns on secured creditors, §1129(b)(2) provides in pertinent part that fairness and equity include that the plan provide both that the holder of the secured claim retain its lien and that the holder receive deferred cash payments totaling at least the allowed amount of such claim as of the effective date of the plan of at least the value of such holder's interest in the estate's interest in such property. This court has held that to determine the appropriate rate of interest to insure that the secured creditor will indeed receive such value as of the effective date of the plan, an analysis must be made of the prevailing market rates of interest in similar loan

transactions as the transaction involving the debtor as calculated at the time of confirmation. In re: Corley, 83 B.R. 848, 852 (Bankr. S.D. Ga., 1988). This necessarily requires further inquiry into the payout period, the quality of the security, the risk of subsequent default, the type of creditor, and the type of borrower. Id. at 853. In no event will the rate of interest

provided by the plan exceed the contract rate. Id. at 853. In the present case, the debtor is clearly part of the general class of borrowers who use the farm credit system. As a result, to be confirmable, the debtor's potential plan would, at a minimum, need to provide for the then current rate of interest between a typical farm credit system lender and borrower for the length of the deferred cash payments to be made under the proposed Chapter 11 plan. In this instance, the Agricultural Credit Act of 1987 could be used to provide the criteria for determination of that rate. Movant's presumption that the contract rate of interest as set out in the promissory notes will prevail is incorrect. There is a distinct possibility that the debtor may be able to reduce the rate of interest on the debt. In addition, under the Bankruptcy Code, the debtor's plan may provide for a reduction ln the amount of the secured debt. The debtor's proposed plan could propose to dispose of portions of the debtor's security, by a sale, with liens attaching to the proceeds and payment of the proceeds to the secured creditor, thus reducing the secured indebtedness. 11 U.S.C. §1123(a)(5)(1). In the present case, the debtor could sell portions of his less productive farmland or standing timber and pay over the proceeds to FLB, thereby reducing that secured indebtedness.

As with the availability of relief under the Agricultural Credit Act of 1987, it is not possible to state with a mathematical certainty at this juncture that the debtor will in

fact be able to adjust the indebtedness due movants using the Chapter 11 provisions to the extent necessary to make a plan feasible. No such standard is required at

this stage ~of this Chapter 11 proceeding. In the early stages of the reorganization process, it is sufficient to show that the debtor's potential for alleviating his debt is not utterly hopeless. Later at the confirmation stage, a full inquiry into the feasibility of the proposed plan will of course be necessary. At this stage, especially during the 120-day exclusivity period, the Bankruptcy Code affords the debtor the opportunity or chance to restructure. At this stage, the burden is upon the debtor to show that the property sought to be foreclosed upon is essential for an effective reorganization and that there exists a reasonable possibility for such reorganization in a reasonable period of time. At the confirmation stage the burden is far greater when the debtor must establish that in fact the proposed plan of reorganization is feasible. 11 U.S.C. §1129(a)(11).

In the present proceeding the debtor has shown that there exist a reasonable prospect for reorganization within a reasonable time as required under Timbers. In the instant case, the debtor's farming operations are generating a positive cash flow and a positive cash flow has been projected by all parties to this motion for the 1988 crop year. The debtor has established the availability of provisions of the Bankruptcy Code and the Agricultural Credit Act of 1987 as vehicles available for

meaningful relief from the obligations due FLB and PCA which would significantly enhance the probability for reorganization. As of the filing of this motion for relief, under the provisions of Timbers this debtor has exhibited a reasonable prospect for reorganization within a reasonable period of time therefore, motion for relief from stay is denied.

ENTERED at Augusta, Georgia this 13th day of September, 1988.

JOHN S. DALIS
UNITED STATES BANKRUPTCY JUDGE